U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34868162

Date: NOV. 19, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a social media artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

II. ANALYSIS

The Petitioner indicates that she is a "powerhouse Hispanic Social Media Artist" and influencer "paving the way for other LGBTQ Artists." The record shows she is one half of the duo [redacted] which has appeared on Cosmopolitan Latin American and the MTV MIAW Awards.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must show that she satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed she could satisfy the following criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual and their work;
- (vi), Authorship of scholarly articles;
- (vii), Display of the individual's work in the field at artistic exhibitions or showcases; and
- (viii), Leading or critical roles for organizations with distinguished reputations.

In denying the petition, the Director concluded that the Petitioner met only one of the evidentiary criteria, published material about the individual and their work at 8 C.F.R. § 204.5(h)(3)(iii).

After reviewing the record in its totality, we conclude that the Director's determinations with respect to the remaining referenced criteria were conclusory and did not specifically address all the Petitioner's claims or evidence. An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-,* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the

respondent a meaningful opportunity to challenge the determination on appeal). Because the Director's decision does not provide a complete analysis and full explanation of the reasons for denial, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below. That decision should include an analysis of the specific evidence submitted in support of each criterion claimed by the Petitioner.

The Director concluded that the Petitioner did not satisfy the criterion at 8 C.F.R § 204.5(h)(3)(i), which requires submission of evidence demonstrating the petitioner's prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. We agree with the Petitioner's assertion that it is difficult to discern, based on the Director's decision, what specific awards were considered in reaching this determination; the decision only vaguely references "copies and photos of various awards" in the analysis of this criterion, without specifically identifying any documents. The Director did not otherwise address the Petitioner's claims or evidence related to this criterion. Instead, the Director made conclusory determinations, including that "there is no objective evidence to ascertain whether the awards or prizes are nationally recognized or internationally recognized, for excellence in the field of endeavor, and in beneficiary's field," and "the beneficiary's prizes or awards appear to be local or regional in nature," without addressing why the documentation submitted in support of this criterion was not sufficient to meet the Petitioner's burden. On remand, the Director should review the record, including the appeal, and issue a new determination with respect to this criterion based on the totality of the evidence the Petitioner submitted.

With respect to the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), on appeal, the Petitioner argues that the Director did not consider its request, in the alternative, to consider comparable evidence under this claimed criterion. The regulation at 8 C.F.R. § 204.5(4) provides that "[i]f the above standards do not apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." USCIS determines if the evidence submitted is comparable to the evidence required in 8 C.F.R. § 204.5(h)(3).[1] This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation. When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation.

A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative. Similarly, general claims that USCIS should accept witness letters as comparable evidence are not persuasive. However, a statement from the petitioner can be sufficient to establish whether a criterion is readily applicable if that statement is detailed, specific, and credible. Although officers do not consider comparable evidence where a particular criterion is readily applicable to the person's occupation, a criterion need not be entirely inapplicable to the person's occupation. Rather, the officer considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the person's job or profession.[2] We agree with the Petitioner. Within its response to the Director's request for evidence (RFE), the Petitioner made arguments for her eligibility under the scholarly articles criterion based on comparable evidence. However, the

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.
[2] *Id.*

Director's decision does not reflect the Director considered the Petitioner's comparable evidence arguments. Accordingly, we will remand the matter to the Director to determine whether the Petitioner first established that the scholarly articles criterion does not readily apply to her occupation. If so, then the Director must determine whether the evidence is truly comparable to this criterion.

Regarding the display criterion at 8 C.F.R. § 204.5(h)(3)(vii), on appeal, the Petitioner states that she asserted her eligibility under this criterion that the Director did not consider. Specifically, in her response to the Director's RFE, the Petitioner made arguments for her eligibility under this criterion based upon the display of her work at "VidCon US" and "VidCon Mexico." However, the Director's decision does not reflect the Director considered the Petitioner's arguments for her eligibility under this criterion. The Director should, therefore, examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion on remand.

Finally, the Petitioner has consistently claimed that she can satisfy the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii), based on her claimed critical roles with [redacted] affiliated organizations collectively known as [redacted] and with [redacted] The decision, however, does not specifically acknowledge this claim, and only determined that the Petitioner did not play a leading role with [redacted] In addition, although the decision referenced "information about the institutes and letters of recommendations which discuss her work," in its analysis it does not specifically address any of the documentation submitted, such as letters from L-C- of [redacted] or L-G-G- from [redacted] We therefore remand the matter to the Director to re-examine the evidence submitted in support of this criterion.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). If, after review, the Director determines that the Petitioner satisfies at least three criteria, the decision should include an analysis of the totality of the record, evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.